



SECTION 107

LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.1 Laws to be Observed. The contractor shall know, observe and comply with all Federal and State laws, local laws, codes, ordinances, orders, decrees and regulations existing at the time of or enacted subsequent to the execution of the contract which in any manner affect the prosecution of the work, except as specified in the contract or as directed by the engineer. The contractor and surety shall indemnify and save harmless the State, the Commission, its agents, employees and assigns from any claim or liability arising from or based on the violation of any such law, code, ordinance, regulation, order or decree, except any local regulations, decrees, orders, codes or ordinances which the contract or the engineer has specifically directed that the contractor need not obey.

107.1.1 Contract and Legal Inconsistency. The engineer shall be notified immediately in writing if any discrepancy or inconsistency is discovered between the contract and any law, ordinance, regulation, order or decree.

107.1.2 Local Building and Zoning Codes or Ordinances. The projects of the Commission are not typically subject to local building or zoning codes or ordinances. Therefore, the contractor usually need not obtain a local building or zoning permit or variance for work done exclusively as the Commission's contractor on the Commission's project and the Commission's right of way. Other local codes or ordinances may not apply to the Commission, and thus to the contractor, as well. If any questions arise concerning whether the contractor must comply with a local code, ordinance, decree or order of any type, the contractor must advise the engineer of the problem immediately, for resolution by the engineer. This provision does not exempt the contractor from the requirement of thoroughly researching and determining, before submitting a bid on the contract and from complying with, all federal, state or local laws, regulations, codes, ordinances, decrees or orders which may apply to the contract work. The Commission is not responsible for the contractor's failure to be informed before bidding as to the federal, state and local laws, regulations, codes, ordinances, decrees or orders which may govern the contract work, or for the contractor's failure to determine before bidding which of these do not govern the contract work.

107.1.3 Authentication of Certain Documents. If plans, plats, detailed drawings or specifications for falsework, cofferdams or any other work are required to be submitted to the engineer, they shall be signed, sealed and stamped in accordance with the laws relating to architects and professional engineers (Chapter 327, RSMo).

107.2 Permits, Licenses and Taxes. Except as otherwise provided in the contract, the contractor shall procure all permits and licenses, shall pay all charges, fees and taxes, and shall give all notices necessary and incidental to the due and lawful prosecution of the work. No direct payment will be made for the cost of complying with this requirement.

107.2.1 Objects Potentially Affecting Navigable Airspace. The contractor shall comply with all Federal regulations pertaining to constructing, erecting, or installing any object, temporary or permanent, that could potentially affect navigable airspace.

107.3 Patented or Copyrighted Devices, Material and Processes. If the contractor is required or desires to use any design, device, material or process covered by letters, patent, copyright, service or trade mark, the contractor shall arrange and provide for such use by suitable agreement with the patentee or owner, and a copy of the agreement may be required by the Commission. The contractor and surety shall indemnify and save harmless the State, the Commission, its agents, employees and assigns from any suits, claims or damages arising from the infringement upon or use of any patented, copyrighted or registered design, device, material, process or mark.

107.4 Safety and Sanitary Provisions. The contractor shall at all times take necessary precautions to protect the life and health of all persons employed on the project. The contractor shall be familiar with the latest accepted accident prevention methods and provide necessary safety devices and safeguards in accordance therewith. The Commission will refuse to provide inspection services at plants or work sites where adequate safety measures are not provided and maintained.

107.4.1 Employee Accommodations. The contractor shall provide and maintain in a neat and sanitary condition, such accommodations for the use of employees as may be necessary to comply with the requirements and regulations of any agency having jurisdiction over public health and sanitation. The contractor shall permit no public or private nuisance.

107.4.2 All sanitary facilities and safety devices shall be furnished free to employees and no direct payment will be made for such facilities or devices.

107.5 Public Convenience and Safety. The contractor shall conduct the work in a manner that will ensure, as far as practicable, the least obstruction to traffic and shall provide for the convenience and safety of the general public and residents along and adjacent to the highway in an adequate and satisfactory manner.

107.5.1 Obstructions Prohibited. Fire hydrants on and adjacent to the highway shall be kept accessible to fire fighting apparatus at all times and no obstruction shall be placed within 10 feet (3 m) of any such hydrant. Footways, gutters, sewers, outlets, inlets and portions of highways adjoining the work under construction shall not be obstructed. Pavements over which hauling is performed shall be kept clean of spilled or tracked-on material at all times when in use by traffic.

107.5.2 Material and Equipment. During construction hours, equipment, material and vehicles utilized in construction of the project will only be allowed on shoulders, medians or pavements where the locations are closed to traffic, properly signed and occupied by ongoing construction operations unless otherwise approved by the engineer. Except in cases of emergency, construction equipment, material and vehicles will not be allowed on pavements or shoulders being utilized by traffic. If the contract specifies time periods the contractor will not be permitted to perform work, construction equipment or vehicles shall not enter or leave the construction area via the pavements handling traffic nor be operated on the pavements handling traffic within the construction area. During non-construction hours, construction equipment, material and vehicles will not be allowed within 30 feet (10 m) of the edge of the pavement or shoulders carrying traffic unless the equipment, material and vehicles are located in a properly protected area, an off-site storage area or as otherwise directed by the engineer.

107.6 Bridges over Navigable Waters. All work on navigable waters shall be so conducted that free navigation of the waterways will not be interfered with and that the existing navigable depths will not be impaired except as allowed by permit issued by the United States Coast Guard or the United States Army Corps of Engineers.

107.7 Use of Explosives. All blasting operations shall be conducted under the direct supervision of a certified, approved blaster as set forth in the contract. When explosives are used in the prosecution of the work, the contractor shall use the utmost care to prevent personal injury and property damage. The contractor shall be responsible for damage resulting from the use of explosives. The engineer has the authority to suspend any unsafe blasting operation. The contractor shall be familiar and comply with the rules and regulations of any city, county, state or federal agency or any other agency which may have jurisdiction in the handling, loading, transporting, storage and use of explosives. All places used for explosives storage shall be marked clearly "DANGEROUS EXPLOSIVES".

107.7.1 Before beginning work, the contractor shall furnish the engineer letters of approval for the proposed operation from the appropriate regulating agencies. The contractor shall notify in writing the appropriate fire protection jurisdiction of the intent to store, transport or use explosives and shall provide proof of notice to the engineer. The contractor shall provide the engineer with copies of all permits, blasting logs and seismic monitoring data.

107.7.2 The contractor shall notify in advance each property owner, tenant and public utility company having structures or facilities close to the work of any intention to use explosives.

107.7.3 Removal of any item or material of any nature by blasting shall be done in such a manner and at such time as to avoid damage affecting the integrity of the design and to avoid damage to any new or existing structure whether on Commission right of way or private property included in or adjacent to the work. Unless the contract documents or the engineer restricts such operation, it shall be the contractor's responsibility to determine a method of operation to ensure the desired results and the integrity of the completed work.

107.7.4 The contractor and surety shall indemnify and save harmless the State, the Commission, its agents, employees and assigns from any claim related to the possession, transportation, storage or use of explosives.

107.8 Preservation of Monuments and Artifacts.

107.8.1 Monuments. The contractor shall not disturb or damage any land monument or property landmark until authorized by the engineer.

107.8.2 Human and Archaeological Remains. The contractor shall be responsible for reporting to the engineer the discovery of human remains, artifacts, fossils and other items of historical, archaeological or geological significance discovered within the right of way during construction. Such items shall remain in the Commission's custody and shall not be removed from the site unless directed by the engineer. The preservation and handling of such items shall be in conformity with [Sec 203.2.9](#).

107.9 Forest and Park Protection. Environmental and sanitary laws and regulations regarding the performance of work within or adjacent to state or national forests or parks must be obeyed. The contractor shall keep the project site in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks and other structures in accordance with the regulations and instructions issued by the forest or park supervisor. Forest fires shall be prevented and suppressed. The contractor shall require employees and subcontractors independently and at the request of forest officials to prevent and suppress forest fires and to notify a forest official of the location and extent of any fire.

107.10 Environmental Protection. The contractor shall comply with all federal, state and local laws and regulations controlling pollution of the environment. Pollution of streams,

lakes, ponds and reservoirs with fuels, oils, bitumens, chemicals or other harmful material and pollution of the atmosphere from particulate and gaseous matter shall be avoided.

107.10.1 Fording of streams is not permitted unless the plan for such operation meets the approval of the engineer and results in minimum siltation to the stream.

107.10.2 When work areas or pits are located in or adjacent to streams, they shall be separated from the main stream by a dike or barrier to keep sediment from entering the stream. Care shall be taken during the construction and removal of such barriers to minimize siltation of the stream.

107.10.3 Disposal of portland cement concrete residue and wash water, water from aggregate washing or other operations resulting in sediment shall be treated by filtration, settling basins or other means sufficient to reduce the sediment concentration to applicable limits established by the Department of Natural Resources.

107.11 Responsibility for Claims for Damage or Injury. The contractor and surety shall indemnify and save harmless the State, the Commission, its agents, employees and assigns from all claims or suits made or brought for personal injury, death or property damage, caused or contributed to be caused by:

(a) The negligence of the contractor, subcontractors, suppliers or their respective officers, agents or employees;

(b) The creation or maintenance of a dangerous condition of or on the Commission's property or right of way, which condition occurred at least in part due to the acts or omissions of the contractor, subcontractors, suppliers or their respective officers, agents or employees; or

(c) The failure of the contractor, subcontractors, suppliers or their respective officers, agents or employees, to perform the work in accordance with the plans and specifications.

107.11.1 Neither the Commission nor the contractor, by execution of a contract, shall intend to or create a new or enlarge an existing cause of action in any third party. This provision shall not be interpreted to create any new liability which does not exist under the statutory limited waiver of sovereign immunity, or to waive or extinguish any defense which either party to this contract or their respective agents and employees may have to an action or suit by a third party.

107.12 Contractor's Responsibility for Work. Until work is accepted by the engineer, it shall be in the custody and under the charge and care of the contractor. The contractor shall restore or replace, at the contractor's expense, any lost or stolen Commission-owned material in the contractor's custody or control. Damages to any portion of the work before its completion and acceptance, caused by the action of the elements or from any other reason, shall be restored or replaced at the contractor's expense. Issuance of a payment estimate on any part of the work done will not be considered as final acceptance of any work completed up to that time. The Commission may, in its discretion, make such adjustment as it considers to be proper for damage to the work due to unforeseeable causes beyond the control of, and without fault or negligence on the part of the contractor.

107.13 Liability Insurance Requirements. The contractor shall procure and maintain at its own expense, until acceptance of the project by the engineer, liability insurance for all damages and losses imposed by law and assumed under the contract, of the kinds and in the amounts specified in [Secs 107.13.1](#) through [107.13.3](#). Before the contractor commences the

work, the contractor shall require the insurance company or companies to furnish to the engineer evidence of such insurance showing compliance with these specifications. All insurance required in [Sec 107.13](#) shall be occurrence policies in a form acceptable to the engineer, and shall remain in force until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by its formal acceptance by the engineer. Each policy or its declaration pages shall provide that the policy shall not be materially changed or canceled until the engineer has been given at least 30 days advance notice in writing. If any policy is canceled before the contract work is complete, a satisfactory replacement policy must be in force, with notice and evidence of insurance submitted to the engineer, prior to the effective date of cancellation of the former policy. All evidence of insurance and notices shall be submitted to: Division Engineer, Construction, MoDOT, 105 W. Capitol Avenue, P.O. Box 270, Jefferson City, Missouri 65102-0270. Upon request, the contractor shall promptly furnish the engineer with a complete copy of the policy. Failure to furnish evidence of proper insurance, or complete insurance policies when requested, will result in the temporary suspension of work as provided in [Sec 108.6](#), and may result in other claims or actions for breach of contract or otherwise, as may be recognized at law or in equity.

107.13.1 Workers' Compensation Liability Insurance. The contractor shall furnish evidence to the engineer that, with respect to the operations it performs, it carries workers' compensation insurance, or is qualified as self-insured, sufficient to comply with all its obligations under state laws relating to workers' compensation. The contractor shall also require each subcontractor on the project to furnish the same evidence to the engineer. This evidence shall be furnished to and approved by the engineer prior to the time the contractor or subcontractor commences work on the site of the project.

107.13.2 Contractor's Liability Insurance with Additional Insured Parties.

107.13.2.1 Commercial General Liability Insurance. The contractor shall obtain one or more occurrence-based policies of commercial general liability insurance (Form CG 00 01 or the equivalent) which provide coverage for the contract work. The minimum limits of liability for commercial general liability insurance shall be: \$1,000,000 each bodily injury or property damage occurrence, combined single limit, \$2,000,000 general aggregate with a per project endorsement and \$1,000,000 products/completed operations aggregate. Each such policy shall be endorsed so as to cover liability arising from blasting if applicable, other inherently dangerous activities and underground property damage. Each such policy shall be endorsed to include broad form general liability, contractual liability and completed operations coverage.

107.13.2.2 Commercial Auto Liability Insurance. The contractor shall obtain one or more occurrence-based policies of auto liability insurance which provide coverage for its owned, non-owned and hired vehicles of every type and description which are used in the contract work. The minimum limits of liability for such insurance shall be \$1,000,000 combined single limit.

107.13.2.3 Additional Insureds. Each such policy of commercial general liability insurance shall name the State of Missouri for the benefit of its State Legal Expense Fund, the Commission and its members, agents and employees, as additional insureds. Each commercial general liability insurance policy shall also contain a separation of insureds condition. The insurance afforded by the contractor shall be primary insurance.

107.13.2.4 Subcontractor's Coverage. If any part of the contract is subcontracted, each subcontractor, or the contractor on behalf of that subcontractor, shall obtain the same commercial general liability insurance and commercial automobile liability insurance coverage. The commercial general liability insurance shall name the same entities specified in [Sec 107.13.2.3](#) as additional insureds, and shall have the same separation of insureds conditions.

107.13.2.5 Navigable Waters Insurance Protection.

107.13.2.5.1 Description. The U.S. Army Corps of Engineers has classified the Missouri and Mississippi rivers as part of the "navigable waters of the United States". Any contractor performing contract work on or adjacent to the Missouri and Mississippi rivers shall obtain insurance coverage in accordance with this specification and may also obtain this insurance coverage for any subcontractor who will perform contract work under that contract.

107.13.2.5.2 Insurance Requirements. Jones Act Insurance, Longshore and Harbor Workers' Compensation Act Insurance, and Maritime Law Liability Insurance shall apply.

107.13.2.5.2.1 Insurance under the Jones Act, 46 U.S.C., shall be obtained to provide any employee of the contractor or subcontractor who qualifies as a "seaman" under the Jones Act with coverage for personal injury, disability or death occurring in the course of his or her employment as a "seaman" on the project. The minimum limits of this insurance coverage shall be \$1,000,000 per occurrence and in the aggregate, or as may be specified by law, whichever amount is higher.

107.13.2.5.2.2 Insurance under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C., shall be obtained to provide any employee of the contractor or subcontractor who is a "person engaged in maritime employment" with compensation payable in respect of that employee's disability or death resulting from an injury on the project occurring within the limits set forth in 33 U.S.C. The minimum limits of this insurance coverage shall be \$1,000,000 per occurrence and in the aggregate, or as may be specified by law, whichever amount is higher.

107.13.2.5.2.3 An additional policy or policies of liability insurance, or endorsement of an existing liability insurance policy or policies, shall be obtained to provide the contractor with liability insurance protection for any work or activity on the project which is potentially subject to maritime law claims. Each such policy of insurance protecting against claims arising under maritime law shall meet all requirements of [Secs 107.13.2](#), [107.13.2.1](#), [107.13.2.3](#), and [107.13.2.4](#). The contractor may also name any subcontractor that is potentially subject to a maritime law claim by the nature or methods of the work the subcontractor performs on the project as an "additional insured" or "additional named insured" on a policy or policies providing maritime law liability insurance protection.

107.13.2.5.2.4 A subcontractor is exempt from meeting the requirements of [Secs 107.13.2.5.2.1](#), [107.13.2.5.2.2](#) and [107.13.2.5.2.3](#) if the contractor obtains the necessary insurance coverage specified on behalf of that subcontractor and produces acceptable evidence of the insurance to satisfy the engineer that the subcontractor and its applicable employees are fully covered by the type(s) and amount(s) of insurance required for the project work to be performed by that subcontractor.

107.13.2.5.2.5 A subcontractor is exempt from obtaining the Jones Act insurance coverage if none of its employees will perform work on the project which qualifies that person as a "seaman" under the provisions of 46 U.S.C.

107.13.2.5.2.6 A subcontractor is exempt from obtaining the Longshore and Harbor Workers' Compensation Act insurance coverage if none of its employees will perform work on the project which would qualify that individual as a "person engaged in maritime employment" in accordance with the definitions of the terms "employer" and "employee" contained in 33 U.S.C.

107.13.2.5.2.7 A subcontractor is exempt from obtaining an additional policy or policies of liability insurance providing maritime law claims protection, or endorsing any insurance policies to provide maritime law claims protection if that subcontractor shall not perform any work or activity on the project that is governed by maritime law.

107.13.2.5.2.8 In order to obtain any of the alternative exemptions in [Secs 107.13.2.5.2.5](#), [107.13.2.5.2.6](#) or [107.13.2.5.2.7](#), the subcontractor must file an affidavit, executed before a notary public by a responsible engineer in its employ on the project, under penalty of perjury, executing a false affidavit or fraud, specifying that the subcontractor is exempt from applicable insurance requirements of [Secs 107.13.2.5.2.5](#), [107.13.2.5.2.6](#) or [107.13.2.5.2.7](#), and detailing the steps personally taken by that engineer and in conjunction with one or more insurance brokers to determine that the subcontractor qualifies for that exemption.

107.13.2.5.2.9 The insurance specified in this provision shall be obtained by the contractor before the contractor or any subcontractor performs any project work subject to the Jones Act, the Longshore and Harbor Workers' Compensation Act, or to maritime law. The insurance specified in this provision shall be obtained by a subcontractor prior to the subcontractor performing any project work subject to the Jones Act, the Longshore and Harbor Workers' Compensation Act, or to maritime law. Satisfactory proof of insurance issued by the insurance company or its broker must be provided in writing to the engineer at or before that time.

107.13.2.5.2.10 Alternatively, the requisite affidavit showing that a subcontractor is exempt from meeting any or all of the insurance requirements of this provision shall be filed by the subcontractor with the engineer no later than thirty days after the subcontractor commences work on the project job site.

107.13.2.5.3 Basis of Payment. No direct payment will be made for compliance with this provision or to reimburse the contractor or subcontractor for the costs of any insurance, proof of insurance or required affidavit.

107.13.3 Railroad Protective Liability Insurance. In addition to other required liability insurance, the contractor shall provide railroad protective liability insurance for and in behalf of the railroad as outlined in provisions for each project. The insurance policy shall be submitted to the engineer in original and duplicate for approval. No work will be permitted on the railroad right of way until such approval is granted.

107.13.4 Insurance with Other Than Missouri Companies. Any insurance policy required as specified above, if written by an insurance company organized in a state other than Missouri, shall be signed by an agent or broker licensed by the State of Missouri. In the case of policies written by companies organized in a state other than Missouri, the evidence of insurance submitted as authorized in the contract shall be signed by an agent or broker licensed by the State of Missouri. Nothing in this provision limits or waives the requirement that each insurance policy must be issued by a company authorized to issue such insurance in Missouri.

107.14 Third Party Liability. Neither the State of Missouri, the Commission nor the contractor, by execution of the contract including these specifications, intend to create a right of action in a third party beneficiary except as specifically set out in these specifications and the contract. It is not intended by any required contractual liability in the contract or in these specifications that any third party beneficiary have a cause of action arising out of the condition of the project when completed in accordance with the plans and accepted by the Commission.

107.15 Personal Liability of Public Officials. There shall be no personal liability upon the Chief Engineer, or any member, employee or agent of the Commission in carrying out any of the provisions of the contract or in exercising any power or authority granted to them, it being understood that in such matters they act as agents and representatives of the State, with official and public duty doctrine immunity. If any provision of the contract appears to impose a duty on such an individual, the duty remains exclusively that of the Commission and is not a personal duty or obligation of the individual.

107.16 Contractors Which Are Not Resident In Missouri. Any contractor which is not a permanent resident of or domiciled in Missouri shall provide the Commission with proof of compliance with the Missouri "nonresident employers" financial assurance laws at Sections 285.230 to 285.234, RSMo, before the contractor performs any work on a project.

107.16.1 A nonresident contractor which is a "transient employer" as that term is defined in Section 285.230.1, RSMo, and 12 CSR 10-2.017(1)(A), shall file with the Commission a photocopy of its current transient employer's certificate of registration issued by the Missouri Department of Revenue, before performing any work on a project. A nonresident contractor which is not classified by the Missouri Department of Revenue as a "transient employer" because it has properly registered with the Missouri Department of Revenue and the Missouri Division of Employment Security, and has filed and paid its Missouri state income taxes for more than 24 consecutive months, shall file with the Commission a photocopy of its certificate of registration, issued by the Missouri Department of Revenue, that it is not a "transient employer" before performing any work on a project.

107.16.2 The contractor shall require a nonresident subcontractor to file with the Commission a photocopy of its current transient employer's or alternate certificate of registration, as issued by the Missouri Department of Revenue, before that subcontractor performs any work on a project.

107.16.3 Any nonresident contractor or subcontractor which fails to file the financial assurance forms with the Missouri Department of Revenue as required by Missouri law shall be prohibited from contracting for or performing labor on any project for a period of one year.

107.16.4 No direct payment will be made for compliance with [Sec 107.16](#).